IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1235 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT GARAGE COMPANY THRO.PARTNER-PADMABEN J NAIK - Petitioner(s)
Versus
MUNICIPAL CORPORATION OF THE CITY OF SURAT & 3 - Respondent(s)

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Appearance :
MR KK TRIVEDI for the Petitioner.
MR PRASHANT G DESAI for Respondent no.1.
MR HS MUNSHAW for Respondent no.2.
Mr. Hukam Singh, Assistant Government Pleader for the Respondent Nos.3 and 4.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 28/03/2007

ORAL JUDGMENT

The present petition has been preferred against the notice dated 27th October, 2006 (at Annexure “A” to the memo of the petition) issued by the respondent Corporation under Section 212 of the Bombay Provincial Municipal Corporations Act, 1949 (for short “the Act of 1949”), whereby the petitioner has been ordered by the respondent Corporation either to vacate the property or it will demolish the same as the construction is coming within “regular line of street”, as prescribed under section 210(1)(a) of the Act of 1949.

2. An important question has been raised by the learned counsel for the petitioner, for adjudication by this Court that :-

> *Whether it is obligatory on the part of the respondent Municipal Corporation of the city of Surat to follow the procedure under Section 210(1)(b) of the Act of 1949 for prescribing regular line of street when for the first time, the said line is prescribed by the Corporation in consonance with finalised development plan (initially in the year 1986 an in revised in the year 2004) under the provisions of Gujarat Town Planning and Urban Development Act, 1976 ?*

3. It is contended by the learned counsel for the petitioner that the respondent Corporation has not followed the procedure prescribed under clause (b) of sub-section (1) of Section 210 of the Act of 1949 and therefore, the resolution prescribing “regular line of street” as well as the notice issued by the respondent Corporation under section 212 of the Act of 1949 (Annexure “A” to the memo of the petition) deserve to be quashed and set aside. It is also contended by the learned counsel for the petitioner that either the Final Development Plan, 1986 or the Draft Revised Development Plan,1996 had this been followed by the respondent Corporation, there would not have been any demolition of the property belonging to the petitioner, especially from Survey No.49 (Block No.25 and sub-plot Nos.4 and 5 thereof). It is also submitted by the learned counsel for the petitioner that on western side of survey No.49, there is a road of Surat Navsari width of which prescribed under Draft Revised Development Plan is 60 Mtrs. On further western side of this road, there are Final Plot Nos.23 and 24 and these final plots are having encroachment and, therefore, on further western side of Surat Navsari road, there is an encroachment and therefore, if the width of the road is slightly taken on further western side, there would not have been any

demolition in Survey No.49, especially upon sub-plot Nos. 4 and 5. This aspect of the matter has also not been properly appreciated by the Commissioner of Municipal Corporation of the city of Surat and therefore also, the notice at Annexure “A” issued under Section 212 of the Act of 1949 deserves to be quashed and set aside. It is also contended by the learned counsel for the petitioner that the Town Planning envisaged under Revised Development Plan,1996 is not a Macro level town planning, but it is a Micro level town planning, looking to Rule 3 of the Gujarat Town Planning Rules,1979. He has also relied upon the decision delivered by this Court in the case of **Girdharlal Ganpatram vs. The Ahmedabad Municipal Corporation, reported in 1960 GLR, 223** and has submitted that even while prescribing regular line of street for the first time, the procedure envisaged as per proviso to clause (b) of sub-section (1) of Section 210 of the Act of 1949 ought to have been followed by the respondent Corporation and it is an admitted fact that such procedure has not been followed and complied with and therefore, the notice at Annexure “A” issued under Section 212 of the Act of 1949 deserves to be quashed and set aside.

4. The learned counsel for the respondent

Corporation has mainly submitted that the decision taken by the Commissioner of the Municipal Corporation of the city of Surat is under Section 210(1)(a) of the Act of 1949 and the Commissioner is for the first time, prescribing street line for the purpose of Act of 1949. The learned counsel for the respondent Corporation has also pointed out from the map that it is the road having land approximately 7 kms. and the petitioner alone is not going to be affected, but it is a decision taken by the Surat Municipal Corporation, whereby if there is any construction within regular line of street, it is to be demolished as per the provisions of the Act of 1949, especially, as per Sections 210, 211 and 212 of the Act of 1949. It is also submitted by the learned counsel for the respondent Corporation that the powers given to the Commissioner under Section 210 of the Act of 1949 are independent from the powers or obligation under Gujarat Town Planning and Urban Development Act, 1976. The Draft Revised Development Plan, 1996 is nothing but a Macro level town planning, whereas the fixation of a regular line of street is a Micro level town planning under the Act of 1949. The power exercised by the Commissioner is under the Act of 1949 and not under Gujarat Town Planning and Urban Development Act, 1976. The learned counsel has also relied upon the decision rendered by this Court in

the case of **Premjibhai D. Karane alias Babubhai vs. Ahmedabad Municipal Corporation reported in 1996(2) GLH, 230, especially paragraphs 6,7,8,9 and 10** and has also relied upon the decision rendered by this Court reported in the case of **Sharifbhai Premjibhai Dodhia vs. State of Gujarat and others 1987(2) GLH, 17-UJ)** and pointed out that the power exercised by the Municipal Commissioner of Municipal Corporation of the city of Surat is absolutely in consonance with the provisions of the Act of 1949 and the notice has been issued under Section 212 of the Act of 1949, for the demolition and, therefore, this Court may not be interfered with by this Court.

5. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to interfere with the notice issued by the respondent Corporation for the following facts and reasons:

(i) It appears from the facts of the present case that Municipal Commissioner of Municipal Corporation of the city of Surat has exercised power under clause (a) of sub-section (1) of Section 210 of the Act of 1949. For the ready reference, Section 210 of the Act, reads as under:

> ***"210. Power to prescribe street lines.***
> *(1) The Commissioner may,*
> *(a) prescribe a line on one or both sides of any public street:*
> *Provided that every regular line of a public street operative under any law for the first time being in force in any part of the City on the day immediately preceding the appointed day shall be deemed to be a street line for the purposes of this Act until a street line is prescribed by the Commissioner under this clause;*
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> *(b) from time to time, but subject in each case to the previous approval of the Standing Committee, prescribe a fresh line in substitution for any line so prescribed or for any part thereof:*
>
> *Provided that such approval shall not be accorded unless, at least one month before the meeting of the Standing Committee at which the matter is decided, public notice of the proposal has been given by the Commissioner by advertisement in the local newspapers and special notice thereof, signed by the Commissioner, has also been put up in the street or part of the street for which such fresh line is proposed to be prescribed and until the Standing Committee has considered all objections to the said proposal made in writing an delivered at the office of the Municipal Secretary not less than three clear days before the day of such meeting."*
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> *(Emphasis supplied)*

From the facts, it is clear that the Standing Committee of the respondent Corporation has passed a resolution bearing No.1002 of 2006 dated 5.7.2006 to implement the work of road widening. The decision was

taken by the Municipal Commissioner that Surat Navsari road should have a width of 60 Mtrs. and certain revenue survey numbers are going to be affected by this road line and, therefore, necessary notice under Section 212 of the Act of 1949 ought to be given so that the concerned owners of the superstructure can remove their structures, failing which, Surat Municipal Corporation can demolish the same. The power exercised by Municipal Commissioner for prescribing the street line under section 210(1)(a) of the Act of 1949 and regular street line is fixed by the Commissioner for the first time. It is not a re-prescription of the said line. Whenever Commissioner is fixing for the first time, the street line, it shall be under Section 210(1)(a) of the Act of 1949. The contention raised by the learned counsel for the petitioner that the procedure required under clause (b) of sub-section (1) of Section 210 of the Act of 1949 is not followed, is not accepted by this Court mainly for the reason that the power exercised by the Commissioner is for prescribing a street line for the first time. If there is re-prescription or revision in a street line, then only Section 210(1)(b) of the Act of 1949 will be made applicable. It is an admitted fact that Municipal Commissioner of the Municipal Corporation of the city of Surat has prescribed regular line of street for the first

time. “The fixation” is not “a revision” of already fixed street line. In such a situation, there is no need to follow the procedure as envisaged under Section 210(1)(b) of the Act of 1949.

(ii) Looking to the fact of the present case, it appears that the prescription of regular line of street by Municipal Commissioner is in consonance with the Draft Revised Development Plan, 1996. The width of the road has been kept intact and as it is. What is prescribed under the Draft Revised Development Plan, 1996 especially width of Surat Navsari road situated on western side of survey No.49 has not been changed by the Municipal Commissioner. Therefore, the contention raised by the learned counsel for the petitioner that the decision taken by the Municipal Commissioner is not in consonance with the Draft Revised Development Plan, 1996 is not accepted by this Court. On the contrary, it is otherwise. The Commissioner has fixed regular line of street, absolutely in consonance with the Draft Revised Development Plan. Looking to the provisions of the Act of 1976, the Draft Revised Development Plan is a Macro town planning. As per section 12 of the Act of 1976, various factors are to be kept in mind while finalising the draft development plan and the road is one of them. Section 12(2)(d) of the Act

of 1976 reads as under:

> ***"Sec.12. Contents of draft development plan.***
> *(1) xxx xxx xxx*
> *(2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely:-*
> *(a) xxx xxx*
> *(b) xxx xxx*
> *(c) xxx xxx*
> *(d) transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development.*
> *(e) ....."* *(Emphasis supplied)*

From the aforesaid section, it is clear that the town planning authority, while prescribing the draft development plan ought to prescribe accurately, the road and not measurements like Final plot measurements, Final plot nos. etc. Measurements accurately will be done later on looking to further provisions of the Act of 1976. The position of the road, highways, parkways, railways, waterways, canals, airport, drainage, water supply, public utilities amenities etc. should be made accurately. Looking to this provision of Section 12 of the Act of 1976, the width of the road was prescribed as 60 mtrs. for Surat Navsari road lying on the western side of survey No.49. This width has been kept intact and as it is by the Commissioner of Municipal Corporation of the city of Surat, but, there was no existing street line.

For the first time, the same is prescribed under Section 210(1)(a) of the Act of 1949. Looking to the map as shown by the learned counsel for the respondent Corporation, this regular line of street affects several survey numbers and not only the petitioner. Neither width of the road can be reduced nor any unnecessary curvatures can be given. Looking to the facts of the case, the Municipal Commissioner of the Municipal Corporation of the city of Surat has absolutely followed the Draft Revised Development Plan,1996 and, therefore, the contention raised by the learned counsel for the petitioner that Surat Navsari road can be slightly shifted on western side, especially towards final plot nos.23 and 24 is not accepted by this Court. Such type of random shifting of the road makes a bad town planning. As far as possible, the roads must be straight, without any unnecessary curves. Length of the road as per the learned counsel for the respondent is approximately 7 kms. Rest of the superstructures have been demolished either on their own or by Surat Municipal Corporation which are coming within regular line of street of Surat Navsari road. As the petition is pending, the respondent Corporation has not demolished the property of the petitioner.

(iii) Looking to the facts of the case, it appears

that no illegality has ever been committed by the respondent Corporation in drawing regular line of street and in giving notice under Section 212 of the Act of 1949.

(iv) The power exercised by the Commissioner of Municipal Corporation of the city of Surat is under the Act of 1949. It is an independent power from the power of Gujarat Town Planning and Urban Development Act, 1976. The prescription of regular line of street is well within the powers of Municipal Commissioner. As stated hereinabove, there is no procedural impropriety. The decision taken is evenly applicable to all as per the judgment rendered by this Court in the case of **Premjibhai D. Kaarane alias Babubhai vs. Ahmedabad Municipal Corporation reported in 1996(2) GLH, 230**, especially as per para-7 thereof which reads as under:

> *"7. The concept of prescribing a line or a regular line or a street line is not new. A civil body in order to secure uniformity of appearance, draw a line on the sides of the road, and projection of building or part thereof beyond the "line" is not allowed. It may have some relevance with the width of the road, but it does not necessarily or solely depends on the width alone. There are number of factors which are required to be considered by the authority in prescribing the street line. This power of a Civic body has been recognized by the Legislation under Section 210 of the BPMC*

> *Act. Prescribing a "line" is a distinct independent statutory power of the Commissioner under the BPMC Act. It is an obligatory power in public interest. It is significant to notice that while there is a provision of drawing a street line or a regular line under the BPMC Act, there is no such provisions in the Town Planning Act. Under the Act, the Town Planning Scheme requires various items to be prescribed which includes "road" but not the "regular line". The Legislature in its wisdom has not provided any provisions with respect of regular line or street line in the Town Planning Act and has conferred this power on one of the most important executive authority of the scheme i.e. Municipal Corporation. Thus, there is no conflict in powers under Section 210 of the BPMC Act and sanctioned scheme under the Act and as such the question of altering or variation of the scheme does not arise, whether it is a case of width of the road or shortening the size of the final plot. Viewing from another angle also, a Regular line or street line brings all the buildings on the road in line. It being a larger public interest, any individual building or part thereof even on the final plot under the sanctioned scheme must give way to the line prescribed under the Act." (Emphasis supplied)*

Thus, it has been decided by this Court that prescribing a street line is a distinct and independent statutory power of the Commissioner under the Act of 1949. It is an obligation in the interest of public at large. It has also been decided by this Court that when Commissioner is prescribing for the first time a street line, he has not to follow procedure as envisaged under Section 210(1)(b) of the Act of 1949. Thus, in view of the aforesaid facts, it is clear that the power exercised

by the Commissioner is absolutely true, correct, legal and in consonance with the provisions of the Act of 1949. The judgment in the case of **Girdharlal Ganpatram vs. The Ahmedabad Municipal Corporation reported in 1960 GLR, 223** cited by the learned counsel for the petitioner, looking to the facts of the present case, is not applicable, to the facts of the present case. Here, Municipal Commissioner has scrupulously followed a Revised Draft Development Plan,1996. The width of Surat Navsari road has been kept as it is 60 mtrs. and for the first time, the Commissioner is prescribing street line. These facts make the case of the petitioner different from the facts referred to in the aforesaid judgment reported in 1960 GLR, 223 and therefore, the said judgment is not helpful to the petitioner.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this petition. Hence, the same is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

(D.N.PATEL,J)

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